

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN EAKIN

Plaintiff,

v.

AMERICAN BATTLE MONUMENTS
COMMISSION, et al.

Defendants.

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Civ. A. No. SA:12-cv-1002-FB-HJB

DECLARATION

I, Gregory Gardner, declare as follows:

1. I am the Chief, Past Conflict Repatriations Branch (PCRB) with the Army Casualty and Mortuary Affairs Operations Center (CMAOC), a component of the U.S. Army Human Resources Command. I have been in this position since June, 2010.
2. The PCRB's primary mission is to collect, assess, integrate and distribute to the next of kin, concerned citizens, and other government agencies information relating to military personnel who remain unaccounted-for from World Wars I and II, the Korean, and the Vietnam War.
3. My duties are focused on program management and supervision of the Army's Past Conflict program in support of Department of Defense. Branch personnel perform case management functions (this includes genealogy research, Family Reference Sample (DNA) gathering, and family outreach/ communications), Identification Briefings (briefing the families in person once identifications are made), and administrative

functions in support of these missions. Our case managers request and coordinate updates to family members based on family questions or new information provided by other Department of Defense personnel accounting offices and components. Updates are provided to family members via letter, e-mail, and voice communications.

4. The Primary Next of Kin (PNOK) of PVT Kelder, Doug Kelder, was notified of the identification of PVT Kelder's remains on 22 January 2015 at 10:16 EST hours.
5. At that time, the Service Casualty Officer explained to Mr. Kelder that, since he had given Mr. Eakin a Power of Attorney (POA), the Office would deal with Mr. Eakin regarding all casualty and mortuary matters to include burial location and timing along with all other mortuary matters. Mr. Kelder then stated that he would be rescinding the POA and that the Office should deal with him regarding all mortuary matters. Later that day, after learning that Mr. Eakin did not agree that the POA was rescinded, the Service Casualty Officer contacted Mr. Kelder via email. See Exhibit 1.
6. After conferring with Mr. Eakin, Mr. Kelder stated that he was not rescinding the POA, but that he still wished to be the one to make the decisions regarding mortuary affairs. This situation was confirmed in the later email on the same day from John Eakin attached as Exhibit 2, and a separate e-mail from Doug Kelder the next day attached as Exhibit 3. The Service Casualty Office never asked, nor recommended, that Mr. Kelder rescind the POA on 22 January 2015 (or any other time).

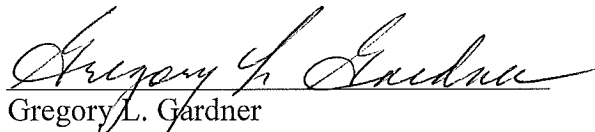
7. Doug Kelder was told on January 22 that it was not the Army Casualty Office's procedure to release the identification documents prior to the ID Briefing. We also explained that this was specifically so that we could address questions regarding the packet at that time. Typically, questions would be answered (or taken for research) during the identification briefing, which has been delayed by the PNOK/PADD. Our experience over hundreds of cases has clearly demonstrated that providing the Identification Packet in person and answering family questions reduces anxiety, stress, and confusion for the family. However, we also stated that we would review his request and get back with him shortly.
8. The Army Casualty Office provided a recommendation to the Director, Casualty and Mortuary Affairs Operations Center and released the documents to Doug Kelder and John Eakin on 24 January 2015. Mr. Eakin's receipt is documented on Exhibit 5.
9. The Army Casualty Office did not discuss the contents of the identification packet with Doug Kelder prior to sending him the ID Packet. This is in accordance with our standard procedures. However, we did notify him and Mr. Eakin in writing, prior to sending the Packet, that the remains were not complete. See Ex. 4, par. 2. We further described the process for returning additional remains, as well as the process to challenge the identifications. Ex. 4, par. 4.
10. Department of Defense Instruction 3001.03, Exhibit 6, provides for the Armed Forces Identification Review Board and sets forth procedures whereby the PNOK/PADD can contest the identification of a Service Member. The challenge must be based on challenges to the scientific evidence and does not address the

issue of completeness of remains. (E.4.1.2) The instruction outlines the specific process and timelines for this challenge. The timeline for challenge does not start until the PNOK/PADD is presented with the government's identification.

11. In the Kelder case this timeline started when the PNOK/PADD received the Identification Packet via Digital File Transfer and confirmed receipt on 25 January 2014. The Service Casualty Officer explained to Mr. Kelder his rights regarding an AFIRB hearing. Mr. Kelder clearly stated that he understood. Mr. Kelder was also provided with links to the regulation so he could research it himself and ask any clarifying questions. John Eakin's Declaration in this action clearly shows that he understands the PNOK/PADD's rights to contest the Identification.
12. Mr. Eakin's contention that the remains are not complete is correct. Mr. Eakin and Mr. Kelder were informed on January 24 in writing that all of the remains are not present. Exhibit 4. This is not unusual. As stated in the January 24 email, "most if not all identified remains we return to families from past conflicts are incomplete." Id. Army Regulation 638-2 sets forth the PNOK's options for the disposition of additional remains.
13. The PNOK/PADD Identification briefing is not currently scheduled and was not held. We have been working with the PNOK, Doug Kelder, and providing him copies of the mortuary documents and answering questions. The Army Casualty Office is prepared to conduct the Identification Briefing if the PNOK/PADD requests one.

14. Remains cannot be released until the PNOK/PADD accepts the identification (and provides disposition instructions) or an AFIRB decision is rendered. There is a clear legal signature trail that must be completed before any remains are shipped to the funeral home of choice.

Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Executed on the 24th day of February, 2015, at my office with the Past Conflict Repatriations Branch in Fort Knox, Kentucky.



Gregory L. Gardner
Branch Chief
Past Conflict Repatriations Branch
Casualty and Mortuary Affairs Operations Center,
U.S. Army Human Resources Command

